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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7   UNITED STATES OF AMERICA,   )
) NO. CR-12-2045-LRS
8   Plaintiff,   )   (CV-14-3181-LRS)
)
9   ) **ORDER DENYING**
     v.   ) **MOTION TO RECONSIDER**
10   )
    CARL EUGENE GONDERMAN,   )
11   )
          Defendant.   )
12 _____)

13   **BEFORE THE COURT** is Defendant's "Motion To Reconsider" (ECF No.

14 54). Defendant asks the court to reconsider its "Order Denying 28 U.S.C. § 2255

15 Motion" (ECF No. 53).

16   This court's order is not clearly contrary to the U.S. Supreme Court's

17 decision in *Descamps v. U.S.*, _____ U.S. _____, 133 S.Ct. 2276 (2013).

18 *Descamps* did not address the "residual clause" of 18 U.S.C. § 924(e)(2)(B)(ii)

19 which this court concluded encompasses Defendant's 2006 Yakima County

20 Superior Court conviction for Attempting to Elude a Police Vehicle, RCW

21 46.61.024 (2003). In *Descamps*, the Supreme Court specifically noted the United

22 States had "forfeited" an alternative argument that the petitioner's California

23 burglary conviction qualified as a predicate offense under the "residual clause"

24 and the Court "express[ed] no view on that argument's merits." *Descamps*, 133

25 S.Ct. at 2293, n. 6. Likewise, the Ninth Circuit's decision in *Navarro-Lopez*, 503

26 F.3d 1063 (9th Cir. 2007) did not involve the "residual clause" and is of no

27 assistance to the Defendant.

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ORDER DENYING
MOTION TO RECONSIDER-   1

1   The court will not reconsider its decision to not grant the Defendant a

2 certificate of appealability. This decision does not necessarily, however, preclude

3 appellate review. Defendant may file an express request that a circuit judge issue

4 a certificate of appealability. If no express request for a certificate is filed,

5 Defendant's Notice of Appeal (ECF No. 55) constitutes such a request addressed

6 to the judges of the court of appeals. Fed. R. App. P. 22(b)(1) and (2).

7   Defendant's "Motion To Reconsider" (ECF No. 54) is **DENIED**.

8   **IT IS SO ORDERED**. The District Executive shall forward a copy of this

9 order to the Defendant.

10   **DATED** this ___7th___ of January, 2015.

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12   *s/Lonny R. Suko*

13   LONNY R. SUKO
                      Senior United States District Judge

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ORDER DENYING
MOTION TO RECONSIDER-   2